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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

October 9, 2008

Richard F. Daines, M.D.
Commissioner
Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

Re: Report 2008-F-21

Dear Dr. Daines:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the New York State Department of Health (Department) to implement the recommendations contained in our audit report, *Physical Therapy Services Provided By Clinics to Medicaid Recipients* (Report 2006-S-63).

Background, Scope and Objectives

The Department administers the State's medical assistance program (Medicaid), which was established under Title XIX of the federal Social Security Act to provide needy people with medical assistance. In New York State, this program is funded jointly by the federal, State, and local governments. Its management information and claims processing functions are handled through the State's eMedNY system, which the Department implemented on March 24, 2005.

There are more than 23,169 licensed physical therapists and certified physical therapy assistants in New York State who provide various types of physical therapy to the residents of the State. The State Education Department licenses physical therapists and certifies physical therapy assistants. According to Article 136, Section 6732 of the State Education Law, only a person licensed or otherwise authorized under Article 136 shall practice physical therapy or use the title physical therapist. According to Section 6734 of Article 136, a licensed professional must re-register every three years. At registration, a licensee can choose to suspend registration, which inactivates the license. If a licensee has not re-registered within the three-year time frame, or if a registration has lapsed without explanation, the licensee's status is listed as unregistered. According to State Education Department officials, a licensee may re-activate a license at any time. According to Article 136, Section 6738, physical therapy assistants must be supervised by an on-site licensed physical therapist.

Every day, the Department receives license updates from the State Education Department and changes the eMedNY provider files accordingly. The eMedNY system has edits in place that serve as controls to assess the accuracy of the information on claims and to determine whether to pay, suspend for further review, or deny claim payment. Some of the edits related to the processing of physical therapy claims pertain to whether or not the therapy provider has an ID or license number and profession code, whether the service license is on file, and if the service provider's license is in active status on the date of service.

Our initial audit report, which was issued on June 5, 2007, determined whether licensed physical therapists were providing services to Medicaid recipients and whether clinics provided sufficient and detailed information on the claims to determine licensed physical therapists provided the services. We found that unregistered physical therapists were listed as the servicing providers on claims that included physical therapy services submitted by clinics. We also that found physical therapy assistants were listed as the servicing providers on claims that included physical therapy services. In addition, we found that no physical therapist was listed as the servicing provider on claims that included physical therapy services submitted by clinics and physical therapists with inactive license numbers were listed as the servicing providers on claims. The objective of our follow-up was to assess the extent of implementation as of August 19, 2008 of the five recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that Department officials have made progress in correcting some of the problems we identified. However, additional improvements are needed. Of the five prior audit recommendations, three recommendations have been implemented, one recommendation has not been implemented and one recommendation is no longer applicable.

Follow-up Observations

Recommendation 1

Assess the purpose of Edits 1244 and 1238 and use the edits as controls to make payment decisions, such as not paying those clinic claims where the servicing license number listed on the claim is inactive or unregistered.

Status - Implemented

Agency Action - The Department has ensured that Edits 1244 and 1238 are turned on and has documented that these edits are denying claims for unlicensed physical therapy providers. We determined that Edit 1244 has denied 761 physical therapy clinic claims totaling \$98,941 since its implementation on April 12, 2007.

Recommendation 2

Design an edit, or modify the logic for edit 1238, to verify the combination of license number and profession code is that of a licensed professional qualified to perform the physical therapy services listed on the claim.

Status - Not Applicable

Agency Action - In our original audit, we reported that physical therapy assistants were listed on the Medicaid claims as the servicing provider. Medicaid paid these claims even though the certified physical therapy assistants were not licensed physical therapists, as required by Department regulations at the time of our audit. Edit 1238 was not able to distinguish between a licensed professional and a certified assistant. Department regulations were since changed to allow certified physical therapy assistants who provide the services to bill Medicaid as the provider qualified to perform the services listed on the claim, rendering our recommendation not applicable.

Recommendation 3

Design an edit, or modify the logic for Edit 263, to verify servicing provider license numbers are listed on clinic claims for physical therapy services.

Status - Implemented

Agency Action - As a result of our original audit, the Department determined that some Legacy edits were not transferred to the new eMedNY claims processing system. Rather than modify Edit 263, the Department restored Legacy Edit 61 which verifies that the provider identification number and profession code are present on the claim. According to Department officials, the provider's license information would then be verified by Edits 1238 and 1244.

Since its restoration on April 24, 2008, Edit 61 has denied clinic claims totaling more than \$3.8 million, including those for physical therapy services.

Recommendation 4

Follow-up with clinic providers to determine if physical therapy services were provided by licensed physical therapists.

Status - Not Implemented

Agency Action - The Department has not followed-up with the clinic providers identified in our initial report to determine if physical therapy services were provided by licensed physical therapists. According to officials, the Office of the Medicaid Inspector General (OMIG) still plans to follow up at a future date by reviewing a sample of claims selected from the clinics identified in our initial report. In addition, Department officials report that OMIG's State fiscal year 2008-09 Medicaid audit plan for clinics includes a step to determine if physical therapy services were performed by licensed physical therapists currently registered with the

New York State Education Department.

Recommendation 5

Instruct the clinic providers to include the licensed physical therapist as the servicing provider when submitting clinic claims to Medicaid for payment of physical therapy services provided to Medicaid recipients.

Status - Implemented

Agency Action - The Department published articles in the October 2007 and April 2008 editions of the New York State Medicaid Update. These articles contained instructions for appropriately billing for physical therapy services.

Major contributors to this report were Karen Bogucki, Donald Collins, Earl Vincent, Rebecca Vaughn and Benjamin Felts.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of the Department for the courtesies and cooperation extended to our auditor during this review.

Very truly yours,

Sheila Emminger
Audit Manager

cc: Stephen Abbott, Department of Health
Tom Lukacs, Division of the Budget